

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

**WAC 25-48-010 Purpose.** The purpose of this chapter is to establish application and review procedures for the issuance of archaeological excavation and removal permits and for the issuance of civil penalties as provided for in chapter ~~((s-27.44 and))~~ 27.53 RCW.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

**WAC 25-48-020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Archaeology" means systematic, scientific study of man's past through his material remains.

(2) "Historic" means peoples and cultures who are known through written documents in their own or other languages. As applied to underwater archaeological resources, the term historic shall include only those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 889-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(3) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

(4) "Professional archaeologist" means a person who:

(a) Has designed and executed an archaeological study as evidenced by a thesis or dissertation((~~τ~~)) and ((~~has~~)) been awarded an advanced degree such as an M.A., M.S., or Ph.D. ((~~from an accredited institution of higher education~~)) in archaeology, anthropology, ((~~or~~)) history or other germane discipline with a specialization in archaeology from an accredited institution of higher education; and

(b) Has a minimum of one year of field experience with at least twenty-four weeks of field work under the supervision of a professional archaeologist, including no less than twelve weeks of survey or reconnaissance work((~~τ~~)) and at least eight weeks of supervised laboratory experience. Twenty weeks of field work

in a supervisory capacity must be documentable with a report on the field work produced by the individual (~~(on the field work)~~).

(5) "Public lands" means lands owned by or under the possession, custody, or control of the state of Washington or any county, city, or political subdivision of the state; including the state's submerged lands under the Submerged Lands Act, 43 U.S.C. Sec. 1301 et seq.

(6) "Site restoration" means to repair the archaeological property to its preexcavation vegetational and topographic state.

(7) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological resources of the state, and which has been certified in writing by two professional archaeologists.

(8) "Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, and technological by-products.

(9) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(10) "Archaeological resource" means any material remains of human life or activities which are of archaeological interest (~~(. This shall include)~~), including all sites, objects, structures, artifacts, implements, and locations of prehistorical or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to, those pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls, and grinding stones, knives, scrapers, rock carvings and paintings, and other implements and artifacts of any material.

(11) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(12) "Of archaeological interest" means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled

collection, analysis, interpretation, and explanation.

(13) "Director" means the director of the department of ~~((community development))~~ archaeology and historic preservation or his or her designee.

(14) ~~((("Office" means the Washington state office of archaeology and historic preservation, department of community development.~~

~~(15))~~ "Department" means the department of ~~((community development))~~ archaeology and historic preservation.

(15) "State historic preservation officer" means the director, who serves as the state historic preservation officer under chapter 43. . . . RCW (Laws of 2005, chapter 333, s 2).

(16) "Suspension" means the abeyance of a permit under this chapter for a specified period of time.

(17) "Revocation" means the termination of a permit under this chapter.

(18) "Mitigation" means:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(f) Monitoring the impact and taking appropriate corrective measures.

(19) "Abandonment" means that the resource has been deserted and the owner has relinquished ownership rights with no retention, as demonstrated by a writing, oral communication, action, or inaction.

(20) "Person" means any individual, corporation, partnership, trust, institution, association, or other private entity; or any officer, employee, agent, department, or instrumentality of the state or any county, city, or other political subdivision of the state.

(21) "Permittee" means any person who holds an active archaeological excavation permit issued under RCW 27.53.060 and this chapter.

(22) "Respondent" means any person who has received a notice of violation under WAC 25-48-041, a notice of permit denial under WAC 25-48-105, a notice that a right of first refusal has been extinguished under WAC 25-48-108, or a notice of suspension or revocation under WAC 25-48-110, and who has

filed an application for an adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

**WAC 25-48-030 Scope and coverage of this chapter.** (1) This chapter ~~((is applicable))~~ applies to any person, ~~((corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the state, county, or city, or a political subdivision of the state))~~ as defined in WAC 25-48-020.

(2) This chapter ~~((is applicable))~~ applies to the alteration, digging, excavating, or removal of archaeological objects or sites or historic archaeological resources which have been abandoned thirty years or more, and to the removal of glyptic or painted records or archaeological resources from native Indian cairns or graves.

(3) This chapter does not apply to the removal of artifacts found exposed on the surface of the ground which are not historic archaeological resources or sites except when there will be removal of glyptic or painted records, or archaeological resources from native Indian cairns or graves.

(4) ~~((This chapter is applicable as follows))~~ The following sections of this chapter apply to the removal of sample artifacts as provided under WAC 25-46-060 (1) (d):

WAC 25-48-010.

WAC 25-48-020.

WAC 25-48-030.

WAC 25-48-050.

WAC 25-48-060 (1) (a) ~~((7))~~ except for the requirements of a completed inventory form, (1) (d), (f), (g), (h), (m), (n), and (5).

WAC 25-48-090.

WAC 25-48-100.

WAC 25-48-105.

WAC 25-48-120.

NEW SECTION

**WAC 25-48-035 Delegation to state archaeologist and assistant state archaeologist.** (1) The director's authority to determine violations of chapter 27.53 RCW and to impose civil penalties under RCW 27.53.095 and this chapter is delegated to the state archaeologist and the assistant state archaeologist, subject to review by the director as provided in WAC 25-48-120. This delegation of authority to the state archaeologist and the assistant state archaeologist is in addition to any other delegation granted in statute, by rule, or otherwise in writing by the director.

(2) The director retains authority to review determinations made by the state archaeologist or the assistant state archaeologist under this chapter and to hear appeals of those determinations.

(3) The state historic preservation officer may delegate to subordinate staff in the office the functions and duties assigned in this chapter to the state historic preservation officer.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

**WAC 25-48-040 Agency policy.** The overriding policy of the ((office)) department is to assure the protection of the archaeological resources of the state. This policy results from:

(1) The legislated duty of the ((office)) department to preserve and protect the heritage of the state in a manner that does not impair the resources (RCW 27.34.220); and

(2) ~~((Recognition of the fact that the public has an interest in the knowledge of the state's heritage and a responsibility to contribute to the preservation and enhancement of that heritage))~~ The public interest in the conservation, preservation, and protection of the state's archaeological resources, and the knowledge to be derived and gained from the scientific study of these resources (RCW 27.53.010).

NEW SECTION

**WAC 25-48-041 Notice of violation--Penalties.** (1)(a) It is unlawful for any person to knowingly and willfully remove, alter, dig into, excavate or remove an archeological object or site or archeological resource without a permit required by RCW 27.53.060.

(b) It is unlawful for any person to knowingly and willfully fail to comply with the provisions of a permit issued by the state historic preservation officer under RCW 27.53.060.

(2) Pursuant to RCW 27.53.095, the state archaeologist or the assistant state archaeologist may issue a notice of violation to any person who knowingly and willfully violates RCW 27.53.060 or the provisions of a permit issued under RCW 27.53.060 and this chapter.

(3) The notice of violation shall impose a monetary penalty of five thousand dollars; provided, however, that the state archaeologist or the assistant state archaeologist may decrease the penalty for the first or second violation upon a determination, supported by specific findings, that the circumstances of the violation warrant a lesser penalty than the statutory maximum. This determination shall be based on the factors set out in WAC 25-48-044. The monetary penalty for any subsequent violation will be five thousand dollars.

(4) In addition to any civil penalty imposed under this section, the notice of violation also shall require the respondent to pay the following costs, as determined under WAC 25-48-043:

(a) Reasonable investigative costs incurred by a mutually agreed upon independent professional archaeologist investigating the alleged violation; and

(b) Reasonable site restoration costs.

(5) The notice of violation shall set forth the conduct determined to violate RCW 27.53.060 or a permit issued thereunder, the damage for which restoration is required, the amount of civil penalty assessed, and, if appropriate, the findings warranting a lesser penalty than the statutory maximum. If the reasonable investigative costs incurred by a mutually agreed upon independent professional archaeologist investigating the alleged violation and the reasonable site restoration costs have been determined, they shall be set forth in the notice of violation; if those costs are determined after the notice of violation has been issued, those costs may be levied against the respondent by a later addendum to the notice of violation or in

a final order following an adjudicative proceeding.

(6) The notice of violation shall inform the respondent of its right to request a hearing to contest the notice of violation.

(7) In addition to any civil penalty imposed under this section, the state archaeologist or the assistant state archaeologist may refer any alleged violation to any federal, state, or county authority with jurisdiction over the act or acts alleged to constitute the violation.

#### NEW SECTION

**WAC 25-48-043 Procedure for selecting a mutually agreed upon independent professional archaeologist investigator and for determining site restoration costs.** (1) Pursuant to RCW 27.53.095, a person found to have violated chapter 27.53 RCW or a permit issued under RCW 27.53.060 shall pay the reasonable investigative costs incurred by an independent professional archaeologist investigating the alleged violation who has been mutually agreed to by the state archaeologist or the assistant state archaeologist and the respondent. The state archaeologist or the assistant state archaeologist and the respondent may agree to investigation by a qualified employee of the department.

(2) If the state archaeologist or the assistant state archaeologist determines an agreement cannot be reached with the respondent under subsection (1) of this section, the independent professional archaeologist investigator shall be selected as follows:

(a) The state archaeologist or the assistant state archaeologist shall notify the respondent that an agreement cannot be reached and instruct the respondent to provide to the department, within five working days, the name, address, and telephone number of a professional archaeologist together with a summary of the professional archaeologist's professional qualifications. The respondent is responsible for all fees and costs billed by the professional archaeologist the respondent selects.

(b) The state archaeologist or the assistant state archaeologist shall select a professional archaeologist who is not employed or contractually bound to the office. The department is responsible for all fees and costs billed by the professional archaeologist the state archaeologist or the assistant state archaeologist selects.

(c) The professional archaeologists selected by the

respondent and by the state archaeologist or the assistant state archaeologist shall jointly select a third professional archaeologist to investigate the alleged violation. Their selection must be communicated to the state archaeologist or the assistant state archaeologist and the respondent within ten working days. The state archaeologist or the assistant state archaeologist shall provide the professional archaeologist investigator with written authorization to conduct the investigation.

(d) The respondent is responsible for all fees and costs billed by the professional archaeologist investigator.

(3) The professional archaeologist investigator agreed to under subsection (1) or (2) of this section shall assess damage and disturbance to the archaeological resource or site caused by the conduct alleged in the notice of violation and prepare a written report containing the following information:

(a) A map and description of the site, indicating the location and extent of damage or disturbance;

(b) An estimate of the volume of soil disturbed;

(c) An inventory of artifacts and archaeological context and data damaged or disturbed;

(d) An estimate of the archaeological value of artifacts and samples damaged or disturbed;

(e) A summary of the site restoration actions required because of damage or disturbance;

(f) An estimate of site restoration costs, supported by a narrative or numerical explanation; and

(g) Any other information the state historical preservation officer reasonably may require.

(4) The written report required under subsection (3) of this section must be provided to the department, the respondent, the affected tribes, local government, and the property owner, within sixty calendar days of the date the professional archaeologist investigator is authorized by the state archaeologist or the assistant state archaeologist to conduct the investigation.

(5) In determining the site restoration actions required because of damage or disturbance, the professional archaeologist investigator shall include the following, as necessary and appropriate:

(a) Landscaping to return the site to its original geography and configuration;

(b) Recovering, analyzing, and reporting on all archaeological materials damaged or disturbed by the alleged conduct;

(c) Preparing the archaeological materials for curation and the cost of curation or, if appropriate, reburial.



NEW SECTION

**WAC 25-48-044 Penalties--Adjustments.** (1) The state archaeologist or the assistant state archaeologist may decrease the penalty imposed under WAC 25-48-041(3) for the first or second violation upon a determination, supported by specific findings based on the following factors, that the circumstances of the violation warrant a lesser penalty:

(a) Whether the respondent's act or acts resulted in actual or potential harm to an archeological site, resource, or object, or to human remains;

(b) Whether the respondent's act or acts involve more than one human remains, the damage or disintegration of human remains, or the use of human remains for profit or other financial gain;

(c) Whether the notice of violation encompasses multiple acts that constitute separate violations of this chapter or chapter 27.53 RCW;

(d) Whether the respondent's act or acts reasonably appear to be part of a pattern of the same or similar conduct, whether or not that conduct previously resulted in any state or federal sanction;

(e) Whether the respondent voluntarily disclosed or reported an act or acts constituting a violation of this chapter or chapter 27.53 RCW;

(f) Whether the respondent voluntarily takes remedial measures to provide increased protection for an archeological site, resource, or object or for human remains;

(g) Whether the respondent voluntarily takes measures to reduce the likelihood the violation will be repeated.

(2) The state archaeologist or the assistant state archaeologist may negotiate an agreed settlement of the penalty with the respondent, on such terms and for such reasons as the state archaeologist or the assistant state archaeologist deems appropriate. Any prior negotiated settlement may be considered by the state archaeologist or the assistant state archaeologist in determining the appropriate penalty for a subsequent violation.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

**WAC 25-48-050 Application requirements and forms.** (1) Any person or entity covered by this chapter (~~and described in WAC 25-48-030~~) proposing to dig, alter, excavate, and/or remove archaeological objects and sites or historic archaeological resources, or proposing to remove glyptic or painted records of tribes or peoples, or archaeological resources from native Indian cairns or graves shall apply to the (~~office~~) department for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued.

(2) Each application for a permit from the department shall be submitted on the archaeological excavation and removal permit application form approved by the (~~director. These~~) state historic preservation officer. An application form(~~s~~) may be obtained from the (~~Office~~) Department of Archaeology and Historic Preservation, (Department of Community Development, 111 West 21st Avenue KL-11, Olympia, WA 98504; telephone (206) 753-5010) P.O. Box 48343, Olympia, WA 98504-8343; telephone 360-586-3065.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

**WAC 25-48-060 Summary of information required of an applicant.** (1) Each application for a permit shall include:

(a) Sufficient background information and summary of previous research and data gaps about the site(s) proposed for excavation such that the reviewers have a cohesive understanding of the sites and current research questions to be able to review the proposal as a complete document.

(b) The nature and extent of the work proposed, including how and why it is proposed to be conducted and the methods proposed for excavation and recovery, proposed time of performance, locational maps, and a completed site inventory form.

(~~(b)~~) (c) Summary of the environmental setting with an emphasis on vegetation, past and present available natural resources, geomorphology and formation processes, and their relationship to the archaeological deposits.

(d) An artifact inventory plan detailing the character of the expected data categories to be recovered including the proposed methods of inventorying the recovered data and proposed methods of cleaning, stabilizing, and curating of specimens and recovered data consistent with the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79.

(e) If human remains are proposed for recovery, a plan for their removal and disposition must be provided; if human remains are not proposed for recovery, a plan for responding to the inadvertent discovery of human remains must be provided.

~~((+e))~~ (f) A professional, scientific research design demonstrating that the work will be performed in a scientific and technically acceptable manner taking into account current scientific research issues and cultural resource management plans.

~~((+d))~~ (g) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in this chapter.

~~((+e))~~ (h) The name and address of the individual(s) proposed to be responsible for carrying out the terms and conditions of the permit, if different from the individual(s) enumerated under ~~((+d))~~ (g) of this subsection.

~~((+f))~~ (i) Financial evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities and evidence of financial support for analysis and report writing.

~~((+g))~~ (j) A plan for site restoration following excavation activities and evidence of plans to secure bonding to cover the cost of site restoration.

~~((+h))~~ (k) Evidence of an agreement for the proposed work from the owner, agency, or political subdivision with management responsibility over the land.

~~((+i))~~ Evidence of filing of the proposed work with the Washington archaeological research center.

~~(j)~~ For amateur society application, evidence of review and recommendations from the Washington archaeological research center.

~~(+k))~~ (l) A site security plan to assure the protection of the site and its contents during the public permit review and excavation process.

~~((+l))~~ (m) A public participation plan detailing the extent of public involvement and dissemination of project results.

~~((+m))~~ (n) A completed environmental checklist as required by WAC 197-11-100 to assist the ~~((office))~~ department in making a threshold determination and to initiate SEPA compliance.

~~((+n))~~ (o) Evidence of abandonment: Abandonment will be

presumed where the applicant presents information that thirty or more years have elapsed since the loss of the resource. If it appears to the ~~((office))~~ department from any source that the resource has not been abandoned or may not have been abandoned, and in the case of all United States government warships, aircraft, or other public vessels, the ~~((office))~~ department will find that the presumption does not arise and will require proof of abandonment. Proof may be satisfied by submission of a statement of abandonment from the owner, his or her successors, assigns or legal representatives, or through final adjudication by a court of law.

(p) Disclosure by the applicant of any previous violation of this chapter or any federal or state law regulating archaeological objects or sites, historic archaeological resources, glyptic or painted records, or native Indian cairns or graves. The applicant shall disclose any such violation by the applicant, by the individual(s) proposed to be responsible for conducting the work, or by the individual(s) proposed to be responsible for carrying out the terms and conditions of the permit, and shall provide details, dates, and circumstances of each violation.

(2) Where the application is for the excavation and/or removal of archaeological resources on public lands, the name of the Washington university, museum, repository or other scientific or educational institution meeting the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79, in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work other than human skeletal remains and funary objects or objects of cultural patrimony. The applicant~~((s))~~ shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard, preserve, and allow for the future scientific access to these materials as property of the state.

(3) Where the application is for the excavation and/or removal of archaeological resources on private land, the name of the university, museum, repository, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work and all collections in the event the landowner ~~((does not wish))~~ wishes to take custody ~~((or otherwise dispose of the archaeological resources))~~ of the collection. If the landowner does not wish to take custody of the collection, the name of the university, museum, repository, or other scientific or educational institution in which the collection will be curated. The applicant~~((s))~~ shall submit written certification, signed by an authorized official of the

institution, of willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work and to safeguard, preserve, and allow for the future scientific access to these materials.

(4) An applicant may temporarily curate a collection identified in subsection (2) or (3) of this section in a repository that meets the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79 until the appropriate Indian tribe has available facilities meeting the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79 into which the collection may be transferred.

(5) Where the application is for the excavation and/or removal of a historic archaeological resource that is an historic aircraft, the name of the Washington museum, historical society, nonprofit organization, or governmental entity that proposes to assume curatorial responsibility for the resource. The applicant ~~((s))~~ shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the resource and all associated records, data, photographs and other documents derived from the proposed work and to safeguard, preserve, and allow for the future scientific and public access to these materials.

~~((+5))~~ (6) After review of the application, the ~~((office))~~ department may require additional information to properly evaluate the proposed work and shall so inform the applicant. Field investigation or research may be required of the applicant or conducted by the ~~((office))~~ department at the applicant's cost. A bond in an amount specified by the ~~((office))~~ department may be required of the applicant to ensure payment of the professional expenses incurred by the ~~((office))~~ department. Advance notice of any anticipated cost shall be given to the applicant.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

**WAC 25-48-070 Notification to Indian tribes.** (1) Upon receipt of a completed application form for archaeological excavation of a native American archaeological site, native Indian cairn or grave, or the removal of glyptic or painted records, the ~~((office))~~ department, at least thirty days before issuing such a permit under this chapter, shall notify ~~((the))~~ any affected Indian tribe which may consider the site to be of historic or cultural significance.

(2) Notice by the ~~((office))~~ department shall be sent to the chief executive officer or other designated official of the native Indian tribe. Any native Indian tribe or other native American group may supply the ~~((office))~~ department in advance with sites or locations for which such tribe or group wishes to receive notice under this section.

(3) Upon request during the thirty-day period, the ~~((office))~~ department may meet with official representatives of any native Indian tribe or group to discuss ~~((their))~~ its interests, including, but not limited to, the proposed excavation methods. Comments received from tribal representatives shall be considered by the department in the issuance or denial of the permit and the issuance of terms and conditions. Mitigation measures requested by the tribal representatives, including stipulations pertaining to the disposition of human remains, may be incorporated into the terms and conditions of the permit.

(4) When the ~~((office))~~ department determines that ~~((a))~~ an emergency permit applied for under this chapter must be issued immediately under WAC 25-48-095 because of an imminent threat of loss or destruction of an archaeological resource, the ~~((office))~~ department shall so notify the appropriate tribe.

(5) The tribes with whom the ~~((office))~~ department has consulted shall be promptly notified in writing of the issuance of the permit.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

**WAC 25-48-080 Public notice.** (1) The ~~((office))~~ department will give public notice of a pending permit application by one or more of the following methods as appropriate for the specific circumstances in order to solicit public and scientific comment:

(a) Notifying public~~((s))~~ and private groups, tribes, and agencies with ~~((a))~~ known interest in a certain application or type of application being considered;

(b) Notifying individuals with known interest in a certain application or in the type of application being considered;

(c) Publication in a newspaper of general circulation in the area in which the application will be implemented;

(d) Notifying the news media; and/or

(e) Posting on the property site in question.

(2) Comments ~~((from such notified agencies, groups, entities or individuals))~~ on a pending application must be received by the department within thirty days of the notice. Comments may be mailed to following address: Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. Arrangements for alternative delivery of comments may be made by calling 360-586-3065.

(3) Comments timely received shall be considered by the department in the issuance or denial of the permit application and the imposition of terms and conditions in the permit.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

**WAC 25-48-085 Applications for excavation and removal of previously registered shipwrecks and historic aircraft.** Where the completed application is for the excavation and/or removal of an historic archaeological resource that is a shipwreck or historic aircraft that has been registered with the department by ~~((an entity))~~ a person other than the applicant, the ~~((office))~~ department will:

(1) Notify the ~~((entity))~~ person by certified mail, return receipt requested, that registered the historic archaeological resource with the department that it shall have sixty days from receipt of notice to submit its own permit application and exercise its first refusal right, or the right shall be

extinguished.

(2) Notify the applicant that its permit application will not be acted upon until the ~~((entity))~~ person that has registered the historic archaeological resource has exercised its right of first refusal by submitting a permit application or has allowed its right to be extinguished.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

**WAC 25-48-090 Issuance of permit.** The ~~((office))~~ department will normally act upon a permit application within sixty days of receipt of a complete permit application, except in the case of an historic archaeological resource where the applicant is not the holder of the right of first refusal. Such applications shall be subject to the provisions of WAC 25-48-085. ~~((The director may issue a temporary permit immediately where delay could cause damage to an archaeological or historic archaeological resource or site. Said permit shall be valid only for thirty days.))~~ The ~~((office))~~ department may issue a permit~~((r))~~ for a specified period of time appropriate to the work to be conducted~~((r))~~ upon determining that:

(1) The applicant, or in the case of an amateur society~~((r))~~ or other group or organization~~((r))~~ the individual proposed to be responsible for conducting the archaeological work~~((, is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological methods and theory, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also))~~:

(a) Meets the minimum qualifications as a professional archaeologist specified in WAC 25-48-020(4);

(b) Possesses demonstrable competence in archaeological methods and theory, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed; and

(c) Has complied with current and past permits issued under RCW 27.53.060.

(2) The proposed archaeological work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data.

(3) The proposed archaeological work, including time,



scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of public lands concerned.

(4) Any Washington university, museum, repository, or other scientific or educational institution proposed as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records.

(5) Where the application is for a state-owned historic archaeological resource, a contract between the applicant and the department has been executed. Such a contract shall include but not be limited to the following terms and conditions:

(a) Historic shipwrecks:

(i) The contract shall provide for fair compensation to a salvor. Fair compensation means an amount not less than ninety percent of the appraised value of the objects recovered following successful completion of the contract.

(ii) The salvor may retain objects with a value of up to ninety percent of the appraised value of the total objects recovered, or cash, or a combination of objects and cash. In no event may the total of objects and cash exceed ninety percent of the total appraised value of the objects recovered. A salvor shall not be entitled to further compensation from any state sources.

(iii) The contract shall provide that the state will be given first choice of which objects it may wish to retain for display purposes for the people of the state from among all the objects recovered. The state may retain objects with a value of up to ten percent of the appraised value of the total objects recovered. If the state chooses not to retain recovered objects with a value of up to ten percent of the appraised value, the state shall be entitled to receive its share in cash or a combination of recovered objects and cash so long as the state's total share does not exceed ten percent of the appraised value of the objects recovered.

(iv) The contract shall provide that both the state and the salvor shall have the right to select a single appraiser or joint appraisers.

(v) ~~((The contract shall provide that the applicant agrees to allow the department access to all artifacts and data recovered from the historic shipwreck for purposes of scholarly research and photographic documentation for the period specified by the department.~~

~~(vi))~~ The contract shall ~~((also))~~ provide that title to the objects shall pass to the salvor when the permit is issued. However, should the salvor fail to fully perform under the terms of the contract, title to all objects recovered shall revert to the state. If the salvor should fail to perform the contract

terms specified in (a)(~~(v)~~) (vi) of this subsection and has disposed of the objects to which title has passed, the salvor shall be liable to the state for liquidated damages in the amount of the appraised value of the objects disposed of.

(vi) The contract shall provide that the applicant agrees to allow the department access to all artifacts and data recovered from the historic shipwreck for purposes of scholarly research and photographic documentation for the period specified by the department.

(b) Historic aircraft:

(i) The contract shall provide that historic aircraft belonging to the state of Washington may only be recovered if the purposes of the salvage operation is to recover the aircraft for a Washington museum, historical society, nonprofit organization, or governmental entity.

(ii) Title to the aircraft may only be passed by the state to one of the entities listed in (b)(i) of this subsection.

(iii) Compensation to the salvor shall only be derived from the sale or exchange of the aircraft to one of the entities listed in (b)(i) of this subsection or such other compensation as one of the entities and the salvor may arrange. The salvor shall not have a claim to compensation from state funds.

(c) Other historic archaeological resources:

The director, in his or her discretion, may negotiate the terms of such contracts.

(6) Evidence that the applicant agrees to mitigate any archaeological damage which occurs during the excavations and recovery operations.

(7) Evidence that the applicant agrees to allow the department access to all artifacts and data recovered from historic archaeological sites for purposes of scholarly research and photographic documentation for a period to be agreed upon by the parties.

(8) Evidence that the applicant agrees to allow the department to have the right to publish scientific papers concerning the results of all research conducted as project mitigation.

(9) ((After the granting of a permit and, when)) If information filed with the ((office)) department becomes inaccurate in any way((,)) or additions or deletions are necessary, the applicant or permittee shall ((submit)) provide the department with full details of any such changes and/or correct any inaccuracy, together with copies of any new required documents, ((with the office)) within fifteen days ((following the)) after the applicant or permittee becomes aware of the inaccuracy or need for change. The ((office)) department reserves the right to suspend or revoke a permit under the terms of WAC 25-48-110 or to amend a permit under WAC 25-48-100 if the new or corrected information warrants.

NEW SECTION

**WAC 25-48-095 Emergency permits.** (1) The department may issue an emergency permit immediately where delay could cause damage to an archaeological or historic resource or site, or to burial(s) or human remains.

(2) Before issuing an emergency permit, the department shall require the applicant to provide the information required in WAC 25-48-060. The department, in its discretion, may allow the applicant to provide the required information in abbreviated form.

(3) The emergency permit shall include the terms and conditions specified in WAC 25-48-100.

(4) The department may issue an emergency permit without complying with the notification requirements in WAC 25-48-070 and 25-48-080, except as provided in WAC 25-48-070(4).

(5) An emergency permit shall be valid for not more than thirty days. The department, in its discretion, may extend the emergency permit for an additional thirty days.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

**WAC 25-48-100 Terms and conditions of permits.** (1) In all permits issued, the ~~((office))~~ department shall specify:

(a) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(b) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit.

(c) The name of any university, museum, repository, or other scientific or educational institutions in which any collected materials and data shall be deposited.

(d) Reporting documentation requirements and site restoration and mitigation requirements.

(2) The ~~((director))~~ department may specify such terms and conditions as deemed necessary, consistent with this chapter, to:

(a) Protect the public interest in the conservation,

preservation, and protection of the state's archaeological resources, and the knowledge to be derived and gained from the scientific study of these resources;

(b) Protect the public safety and other values and/or resources((, -te));

(c) Secure work areas, ((te)) safeguard other legitimate land uses, and ((te)) limit activities incidental to work authorized under the permit.

((This may include)) (3) The department may require evidence of sufficient bonding to cover cost of site restoration.

((+3)) (4) The department may specify such terms and conditions as deemed necessary that are recommended by persons commenting within the comment period provided in WAC 25-48-080.

(5) The ((office)) department may include in permits issued for archaeological work on native Indian cairns and graves or glyptic or painted records such terms and conditions as may be requested by the concerned native Indian tribe and approved by the department.

((+4)) (6) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

((+5)) (7) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

((+6)) (8) The permittee may request that the ((office)) department extend or modify a permit. Such a request will require compliance with all the provisions of this chapter.

((+7)) (9) The permittee's performance under any permit issued for a period greater than one year shall be subject to review by the ((office)) department, at least annually.

(10) If at any time the department determines the terms and conditions of the permit are inadequate to provide the protections addressed under subsections (2) and (3) of this section, the department may add, amend, or delete the terms and conditions of the permit.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

**WAC 25-48-105 Permit denial.** If a permit is denied, a written statement of the reasons for the denial will accompany the notice of permit denial to the applicant as well as notice of the right to request a hearing. A permit may be denied (~~for failure to adequately meet the requirements of an applicant under WAC 25-48-060 and/or the standards set forth in WAC 25-48-090~~) if:

(1) The application does not meet the requirements and standards in WAC 25-48-060 and 25-48-090;

(2) The applicant or any individual proposed to be responsible for conducting the work or carrying out the terms and conditions of the permit has failed to meet the terms and conditions of a permit previously issued under this chapter; or

(3) The applicant or any individual proposed to be responsible for conducting the work or carrying out the terms and conditions of the permit has been found to have violated this chapter or any federal or state law regulating archaeological objects or sites, historic archaeological resources, glyptic or painted records, or native Indian cairns or graves.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

**WAC 25-48-108 Right of first refusal--Discovery of new technology.** (1) Any (~~(agency, institution,)~~) person (~~(, firm, or corporation which)~~) that has been denied a permit because the historic archaeological resource would be destroyed beyond mitigation by (~~(their)~~) its method of salvage shall have the right of first refusal for a permit at a future date should technology be found which would make salvage possible without destroying the historic archaeological resource.

(2) Such rights may be assigned, but it is the responsibility of the parties to the assignment to provide written evidence of the assignment to the department, including the correct name and mailing address of the assignee.

(3) Upon receipt of a complete permit application and determination that a new technology can salvage the resource, the (~~(director)~~) department shall notify by certified mail,

return receipt requested, the holder of the right of first refusal of a permit application that a new technology exists and the holder has sixty days from the receipt of the ~~((director's))~~ department's determination to submit its own permit application and thereby exercise its first refusal right, or the right shall be extinguished.

(4) If the person(~~(, firm, corporation, institution, or agency)~~) that possesses the first refusal right for a permit does not exercise its first refusal right within the sixty-day time period, the department shall send to that ~~((entity))~~ person a notice by certified mail, return receipt requested, that the ~~((entity's))~~ person's right of first refusal has been extinguished.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

**WAC 25-48-110 Suspension and revocation of permits.** (1) The ~~((office))~~ state archaeologist or the assistant state archaeologist may suspend or revoke a permit issued pursuant to this chapter upon determining that the permittee has failed to meet any of the terms and conditions of the permit and upon at least twenty days written notice. In the case of emergencies which imminently threaten health, safety, or welfare including property, the ~~((office))~~ state archaeologist or the assistant state archaeologist may summarily suspend a permit by immediately issuing a written order which incorporates a finding to that effect.

(2) The ~~((office))~~ state archaeologist or the assistant state archaeologist shall provide the permittee with written notice ~~((and the notice of right to request a public hearing to the permittee))~~ of the suspension or revocation, the cause thereof, and in the case of a suspension, the length of the suspension and the requirements which must be met before the suspension will be removed. The notice shall inform the respondent of its right to request a hearing to contest the revocation or suspension. In addition, a notice of summary suspension shall inform the respondent of its right to request an emergency adjudicative proceeding.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

**WAC 25-48-120 ((Appeals relating to permits.))**  
**Administrative appeals.** ((Any affected person may request a hearing to appeal a denial, suspension, or revocation of a permit or extinguishment of a right of first refusal under WAC 25-48-108 to the director. Said request must be in writing and filed with the director within twenty-one calendar days of receipt of notice of the denial, suspension, revocation, or extinguishment.)) (1) An applicant for or holder of a permit issued under this chapter may request a hearing to contest a penalty imposed under WAC 25-48-041, the terms and conditions imposed on a permit under WAC 25-48-100, a denial of a permit application under WAC 25-48-105, a suspension or revocation of a permit under WAC 25-48-110, or the extinguishing of a right of first refusal under WAC 25-48-108.

(2) A request for a hearing shall be made by filing a written application for adjudicative proceeding with the department at the following address: Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. The application must be received by the department within twenty-one calendar days of the date of service of the notice of the penalty, denial, suspension, revocation, or extinguishing. An application contesting the terms and conditions imposed on a permit under WAC 25-48-100 must be received by the department within twenty-one days of the date the permit was issued. The application shall specify the issue or issues to be decided and indicate whether the requester desires a full adjudicative proceeding, a brief adjudicative proceeding, or an emergency adjudicative proceeding.

(3) When the department receives an application for adjudicative proceeding, it will immediately notify the director of its receipt and provide the director and the state archaeologist or the assistant state archaeologist with a copy of the application and the notice or document being appealed. The director thereupon will designate a presiding officer as follows:

(a) Where an application requests a full adjudicative proceeding, or where the director determines a full adjudicative proceeding is required, the director will designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW.

(b) Where an application requests a brief adjudicative proceeding or emergency adjudicative proceeding, or where the

director determines a brief adjudicative proceeding or emergency adjudicative proceeding is appropriate, the director will designate a senior staff person in the department as presiding officer. The person designated shall not have participated in the matter and shall not be subject to the authority or direction of any person who has participated in the matter.

(4) Upon being designated, the presiding officer shall notify the requestor, the state archaeologist, and the assistant state archaeologist of his or her name and business address and provide any other information required by chapter 34.05 RCW, 10-08 WAC, or this chapter.

(5) Upon receiving the notice required in subsection (4) of this section, the state archaeologist or the assistant state archaeologist shall immediately transmit to the presiding officer the application, together with any accompanying documents provided by the requester, and a copy of the notice or other document being appealed.

#### NEW SECTION

**WAC 25-48-121 Adjudicative proceedings.** (1) The department hereby adopts the model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, for use in adjudicative proceedings of agency action under this chapter.

(2) "Service" and "filing" of documents in adjudicative proceedings, brief adjudicative proceedings, and emergency adjudicative proceedings are defined as in RCW 34.05.010 and WAC 10-08-110.

(3) In the case of a conflict between the model rules of procedure and this chapter, the rules in this chapter shall take precedence.

(4) All factual determinations shall be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The burden in all proceedings is a preponderance of the evidence.

(a) In all proceedings contesting the denial of a permit application under WAC 25-48-108, the burden shall be on the applicant to establish that the application meets all applicable requirements and standards.

(b) In all proceedings contesting the extinguishing of a right of first refusal under WAC 25-48-108, the burden shall be on the person challenging the extinguishing to establish the timely exercise of its right of first refusal.

(c) In all other proceedings, the burden is on the state



historic preservation officer to prove the alleged factual basis set forth in the notice.

#### NEW SECTION

##### **WAC 25-48-122 Brief adjudicative proceedings. (1)**

Pursuant to RCW 34.05.482, the department will use brief adjudicative proceedings where permitted by law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. A brief adjudicative proceeding is intended to serve as an inexpensive and efficient alternative where the issues can be decided by reference to writings and other documents without a full, formal hearing.

(2) A brief adjudicative proceeding may be used to review the following actions taken under this chapter:

(a) A notice of violation of the terms and conditions of a permit under WAC 25-48-041 (1)(b);

(b) A denial of a permit application under WAC 25-48-105;

(c) Extinguishing a right of first refusal under WAC 25-48-108.

(3) An application for brief adjudicative proceeding shall include a written explanation of the applicant's view of the matter and a copy of any other documents the applicant wishes to have the presiding officer consider. Any response by the department shall be filed with the presiding officer and served on the applicant within fourteen days of receiving an application for a brief adjudicative proceeding.

(4) If the applicant desires an opportunity to make an oral statement to the presiding officer, a request to make an oral statement must be included in the application for a brief adjudicative proceeding. The presiding officer may grant a request to make an oral statement if the presiding officer believes the statement would benefit him or her in reaching a decision. The presiding officer shall notify the parties within a reasonable time of his or her decision to grant or deny a request to make an oral statement. If the presiding officer grants any request to make an oral statement, all parties shall be entitled to make oral statements, and the presiding officer shall notify all parties of the time and place for hearing oral statements.

(5) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days of the decision, the presiding officer shall serve upon each party a

brief written statement of the reasons for the decision and information about any internal administrative review available.

(6) The presiding officer's brief written statement is an initial order. The initial order shall be the final order without further action unless within twenty-one days of the date of service a party requests administrative review of the initial order or the director initiates review of the initial order.

(7) If the presiding officer determines a more comprehensive hearing is warranted, or on the motion of any party, he or she may convert the proceeding to a full adjudicative proceeding by requesting in writing, with findings supporting the request, that the proceeding be so converted and that the director designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW. The director will act as soon as possible on the request.

(8)(a) A party may request review of the initial order by filing a written request with the director at the following address: Director, Department of Community, Trade, and Economic Development, P.O. Box 42525, Olympia, WA 98504-2525. A request for review of an initial order shall contain an explanation of the requester's view of the matter and a statement of reasons why the initial order is incorrect. The request must be received by the director and served on all other parties within twenty-one days of the date the initial order was served on the parties. A copy of the request must be served on the state archaeologist or the assistant state archaeologist.

(b) Any response to the request for review of an initial order shall be filed with the director and served on the requester within ten days after receiving the request.

(c) In response to a request for review of an initial order, the director shall immediately obtain the record compiled by the presiding officer. The director, at his or her sole discretion, may act as the reviewing officer or designate a reviewing officer who is authorized to grant appropriate relief upon review.

(d) The reviewing officer may issue an order on review, which shall include a brief statement of the reasons for the decision and include a notice that judicial review may be available.

(e) A request for review of an initial order is deemed to have been denied if the reviewing officer does not issue an order on review within twenty days of the date the request for review of the initial order was filed with the director.

(9)(a) The director may initiate review of the initial order on his or her own motion, without notifying the parties. The director, at his or her sole discretion, may act as the reviewing officer or designate a reviewing officer who is authorized to grant appropriate relief upon review.

(b) The reviewing officer shall obtain and review the record compiled by the presiding officer before taking action.

(c) The reviewing officer may not take any action on review less favorable to any party than in the initial order without giving that party notice and an opportunity to provide a written explanation of its view of the matter. The notice shall specify the deadline for that party to submit its written explanation.

(d) Any order on review shall be issued and served on the parties within twenty days of the date the initial order was served on the parties or within twenty days of the date a request for review of the initial order was filed with the director, whichever occurs later. If an order on review is not issued and served by the applicable deadline in this paragraph, the initial order becomes the final order.

#### NEW SECTION

**WAC 25-48-123 Emergency adjudicative proceedings.** (1) A respondent who receives a notice of summary suspension of a permit under WAC 25-48-110 may request an emergency hearing under RCW 34.05.422 and 34.05.479 to contest the findings included in the notice of summary suspension by filing an application for emergency adjudicative proceeding. A respondent who does not file an application for emergency adjudicative proceeding may contest the findings included in the notice of summary suspension in a regularly scheduled adjudicative hearing.

(2) An application for emergency adjudicative proceeding must be received by the department within seven calendar days of the date of service of the notice of summary suspension. An application for emergency adjudicative proceeding received by the department more than seven calendar days after the date of service of the notice of summary suspension shall be deemed an application for full adjudicative proceeding and will be scheduled accordingly.

(3) An application for emergency adjudicative proceeding shall include a written explanation of the applicant's view of the summary suspension and a copy of any other documents the applicant wishes to have the presiding officer consider.

(4) The presiding officer, in his or her discretion, may provide for telefacsimile or electronic service and filing of documents, using means that are similarly available to all parties, in the notice required in WAC 25-48-120(4).

(5) Upon receiving the notice required in WAC 25-48-120(4), the state archaeologist or the assistant state archaeologist

shall immediately transmit to the presiding officer copies of any documents that were considered or relied upon in issuing the notice of summary suspension, in addition to the documents listed in WAC 25-48-120(5).

(6) Within seven business days after receiving an application for emergency adjudicative proceeding, the presiding office shall issue an order that either:

(a) Affirms that the summary suspension is necessary to prevent or avoid immediate danger to the public health, safety or welfare including property; or

(b) Sets aside the summary suspension as unnecessary to prevent or avoid immediate danger to the public health, safety or welfare including property.

No other issue shall be decided in the emergency adjudicative proceeding. The order shall include a brief statement of findings of fact, conclusions of law, and policy reasons for the decision.

(7) The order is effective when signed by the presiding officer. The presiding officer shall promptly notify each party of the decision and serve each party with a copy of the order.

(8) If other issues remain to be decided, or if the respondent requests review of the order, the presiding officer may request that a full adjudicative proceeding be scheduled and that the director designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW. The request shall summarize the issues that remain to be decided. The director will act as soon as possible on the request. The order issued under this section becomes final unless within seven days of the date of issuance a full adjudicative proceeding is scheduled.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

**WAC 25-48-125 Listing of areas where permits are required to protect historic archaeological sites on aquatic lands.** The following is a list of those areas where permits are required under RCW 27.53.060 to protect historic archaeological sites on aquatic lands:

Lake Washington.

Elliott Bay.

Columbia River Bar.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

**WAC 25-48-130 Display of permit.** (1) The permit granted by the ((office)) department shall be prominently displayed at all times upon the archaeological site being excavated during the permitted period.

(2) If more than one archaeological site is being excavated under a single permit, the permittee may obtain from the ((office)) department such copy or copies of his or her permit as may be necessary to display at each archaeological site being excavated.

(3) The director or his designee, including the state archaeologist and the assistant state archaeologist, may examine at any time the permit, work, and site at which such permitted work is being undertaken.

NEW SECTION

**WAC 25-48-135 Procedure for collecting radiometric data without a permit.** A professional archaeologist, as defined in WAC 25-48-020(4), may collect radiocarbon samples without first obtaining a permit under this chapter if the following conditions are met:

(1) The sample or samples must consist of charcoal or shell; no human or mammal bone may be sampled without a permit;

(2) At least ten working days in advance of the sampling, the professional archaeologist must notify the office of the planned radiocarbon sampling; and

(3) Within thirty days of receiving copies of the results worksheets or their equivalent from the radiocarbon laboratory, the professional archaeologist must submit to the office copies of the results worksheets or their equivalent together with a brief written report documenting sampling and results.